

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

FILED CLERK  
U.S. DISTRICT COURT

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TEXAS-EASTERN

MARK KEVIN MILESKI

§

BY \_\_\_\_\_

V.

§

CASE NO. 4:04cv403  
(Judge Schell/Judge Bush)

MICHAEL O. LEAVITT, SECRETARY,  
UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
ET AL.

§

§

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

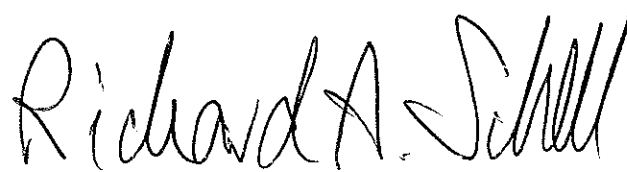
Came on for consideration the Report of the United States Magistrate Judge in this action, this matter having been heretofore referred to United States Magistrate Judge Don D. Bush pursuant to 28 U.S.C. § 636. On May 13, 2005, the Magistrate Judge entered his Report containing his proposed findings of fact and recommendations that the Defendants' Motion to Dismiss be granted and that the Secretary's decision be affirmed.

After considering the report of the United States Magistrate Judge and making a *de novo* review of the objections raised by Plaintiff thereto, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of Plaintiff are without merit. Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this Court. It is, therefore,

**ORDERED** that Defendants' Motion to Dismiss is GRANTED and the decision of the Secretary of the United States Department of Health and Human Services is AFFIRMED. It is further

**ORDERED** that the above titled and numbered cause of action is DISMISSED pursuant to Federal Rule of Civil Procedure 12(b)(6).

SIGNED this 3<sup>rd</sup> day of June, 2005.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. The first name "Richard" is written in a larger, more prominent script, followed by "A." and "Schell". The signature is positioned above a horizontal line.

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE